

Attachment 1

**AVILA BEACH FRONT STREET PLAZA
CONCESSION CONTRACT**

This Contract is entered into by and between the County of San Luis Obispo, a public entity in the State of California, hereinafter referred to as "County," and California Hot Dog Co., hereinafter referred to as "Concessionaire."

County and Concessionaire hereby mutually covenant and agree as follows:

1. Premises: County hereby authorizes Concessionaire, subject to the conditions and limitations hereinafter set forth, to exclusively use approximately 50 square feet of County owned real property commonly referred to as the Avila Beach Front Street Plaza, hereinafter referred to as "Premises" and shown on Exhibit "A".

2. Term: Unless terminated sooner as provided herein, the term of this Contract shall be for a period of two (2) years, commencing on March 1, 2013 ("Initial Term") and terminating at 11:59 p.m. on March 31, 2015. This term may be pro-rated depending on start date.

3. Use of Premises:
 - A. Concessionaire shall use the Premises for the sole purpose of operating a mobile food and beverage vending cart service, to serve the general public on County-owned property which is held for park purposes. Said use shall be consistent with the Avila Beach Specific Plan adopted by the San Luis Obispo County Board of Supervisors on October 17, 2000.
 - B. No permanent or semi-permanent structures, mobile or fixed carts, kiosks, booths or similar configurations are permitted on the Premises without the prior

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written approval by the General Services Agency Director or his/her designee, collectively ("Director").

C. Concessionaire shall oversee the Premises and all of its improvements. Concessionaire shall be responsible for ensuring the Premises and the vending cart is well cared for, clean and an enhancement to the community as a whole.

D. Concessionaire agrees that the County shall not be responsible to Concessionaire for any loss of property at the Premises, however occurring.

E. Concessionaire agrees that the Premises are located in and adjacent to a multi-use public area at the Avila Beach Front Street Plaza. Concessionaire shall operate and conduct its business in a good, efficient and economical manner so as to be conducive to providing service to the public on a fair, equal and not unjustly discriminatory basis and in a manner conducive to the obtaining and retaining of the general good will of the community and of the public.

F. Concessionaire shall not use the Premises during the term of this Contract for any purpose other than as set forth in this Section 3, without prior written consent of the Director. Concessionaire expressly agrees to maintain Premises in condition similar to the quality and service level of similar businesses in like locations.

G. Concessionaire shall at all times faithfully obey and comply with all present and future laws, rules and regulations of Federal, State, County or other governmental bodies or department of officers thereof, including but not limited, any relevant County of San Luis Obispo Health Agency licensing or permit requirements, rules or regulations. Concessionaire's use of said Premises is subject to all statutes, ordinances and regulations, including, without limitation, those relating to land use and zoning now or hereafter applicable to the Premises, and to all covenants, easements, reservations and restrictions of record applicable to the Premises.

H. Concessionaire shall be solely responsible for providing of all services, equipment, supplies, and personnel for the administration, staffing, operation and maintenance of the Concessionaire's business at the Premises as described in this Contract and within minimum operating requirements as stated in Exhibit B. Concessionaire shall provide food and beverages as described in Exhibit "C" at prices

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indicated in Exhibit "C". Concessionaire may only make changes to Concessionaire's food and beverage menu and pricing with the prior written approval of the Deputy Director of Parks.

I. Concessionaire shall obtain and keep current all local, state and federal licenses and permits that may be required in its operation under this Concessionaire.

4. **Contract Fee:** Concessionaire shall pay the County the sum of \$5,000 per year of this contract, paid in equal quarterly installments in advance of each quarter starting March 1, 2013 to the Parks finance officer located at 1087 Santa Rosa Street San Luis Obispo, CA 94308. Payments (may be pro-rated dependent on start date) shall be on or before the following dates and in the following amounts:

Year One

March 1, 2013 1st payment installment due

June 1, 2013 2nd payment installment due

September 1, 2013 3rd payment installment due

December 1, 2013 4th payment installment due

Year Two

March 1, 2014 1st payment installment due

June 1, 2014 2nd payment installment due

September 1, 2014 3rd payment installment due

December 1, 2014 4th payment installment due

No portion or portions of fees shall be refunded for any unused portion of the Term, whether this Concessionaire is terminated by Concessionaire, the County or any other entity prior to completion of the Term.

5. **Improvements to Premises:** Concessionaire accepts the Premises in an "as is" condition. At the expiration or earlier termination of this Contract, all alterations, modifications, or improvements upon the Premises whether made by the County or by the

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Concessionaire absent any agreement between the County and the Concessionaire to the contrary at the time of installation, or unless County otherwise elects, which election shall be made by giving a notice in writing not less than fifteen (15) days prior to the expiration or other termination of this Contract, shall remain upon and be surrendered with the Premises as a part thereof at the end of the term of this Contract. In the event County shall notify Concessionaire to remove any and all of the alterations, additions, or improvements made by the Concessionaire, Concessionaire shall promptly, at Concessionaire's sole cost and expense, remove items and repair any damage caused by such removal.

6. **Inspections:** County, its officers, agents and employees, shall have the right to examine the Premises at any time (at least on a quarterly basis), determine what repairs are needed and to direct Concessionaire to make such repairs, resulting from Concessionaire's use of the Premises, as may be necessary at the sole cost and expense of Concessionaire. Quarterly inspections will be performed in the presence of Concessionaire representative, with the results provided in writing to the Concessionaire. In the event Concessionaire fails to make repairs discovered in the inspection, the County may make said repairs and charge Concessionaire for the cost of said repairs and Concessionaire agrees to pay any and all such costs upon demand. County, its officers, agents and employees, shall have access to and the right to enter upon the Premises at any time to examine condition thereof, to make any repairs required to be made by County hereunder, and for any other purpose deemed reasonable by County.

7. **Repairs Maintenance and Alterations:** Concessionaire, at Concessionaire's sole cost and expense, shall maintain and keep the Premises and all improvements placed thereon in a clean, safe, sanitary condition, and good state of repair during the term of this Contract and shall not, at any time, commit or suffer to be committed any waste, nuisance, or unlawful act thereon resulting from their use of the Premises. Maintenance will include regular litter pickup, trash disposal, and any routine maintenance activities associated with regular use of the Premises. Concessionaire shall haul out their own trash. Should the

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Concessionaire fail or neglect to make repairs, as necessary to protect the health, safety, or welfare of individuals using the Premises, County may, after ten (10) working day's written notice to Concessionaire, make said repairs and charge Concessionaire for same, and Concessionaire shall pay County costs for repairs on demand.

The Concessionaire shall have the right to make limited and conditional alterations to the Premises. Such alterations made by Concessionaire are subject to the following conditions:

A. No alterations shall be made until plans and specifications are submitted to the Director for written approval.

B. All work performed in connection with any alteration shall be performed in a good and workmanlike manner and in compliance with all building and zoning laws, and with all other laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers thereof.

C. There shall be maintained at Concessionaire's expense, at all times during permitted construction or alteration, worker's compensation insurance in accordance with laws covering all persons employed in connection with alteration, and general liability insurance for the mutual benefit of the County and Concessionaire covering the additional hazards during construction of any alteration.

D. Concessionaire hereby agrees to be solely responsible for the total care and maintenance of fixtures and equipment installed by Concessionaire or its predecessors servicing the Premises, irrigation, water features, lighting, trees and planters including all costs in connection therewith.

8. Insurance:

Concessionaire shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Concessionaire, his agents, representatives, employee's, or subcontractors. With

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respect to General Liability, Errors & Omissions, Contractors Pollution Liability, and/or Asbestos Pollution Liability, coverage should be maintained for a minimum of five (5) years after Contract completion.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 07 04 covering CGL on an "occurrence" basis, including products-completed operations, property damage, bodily injury, & personal injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Concessionaire has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- c. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- d. **Concessionaire's Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions** applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

Deductible and Self Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, the Concessionaire shall provide coverage to reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Concessionaire shall provide evidence

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satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

A. The General Liability, Automobile Liability, Concessionaire's Pollution Liability, and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:

1. The County, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Concessionaire; and with respect to liability arising out of work or operations performed by or on behalf of the Concessionaire including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Concessionaire's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 forms if later revisions used).
 2. For any claims related to this project, the Concessionaire's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents, or volunteers shall be excess of the Concessionaire's insurance and shall not contribute with it.
 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the County.
- A. The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Concessionaire pursuant to the Contract. This coverage may also be provided on the Concessionaire's Pollution Liability policy.

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B. If General Liability, Concessionaire's Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the Permit or the beginning of Contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract effective date, the Concessionaire must purchase an extended period coverage for a minimum of five (5) years after completion of Contract work.
4. A copy of the claims reporting requirements must be submitted to the County for review.
5. If the services involve lead-based paint or asbestos identification / remediation, the Concessionaire Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification / remediation, the Concessionaire Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII if admitted in the State of California. If Concessionaire Pollution Liability, Asbestos Pollution and/or Errors & Omissions coverages are not available from an admitted insurer, the coverage may be written by a non-admitted insurance company. A non-admitted company should have an A.M. Best rating of A:X or higher. Exception may be made for the California State Compensation Insurance Fund if not rated.

Verification of Coverage

Concessionaire shall furnish the County with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Contract. All certificates and endorsements are to be received and approved by the

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County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Concessionaire's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Waiver of Subrogation

Concessionaire hereby grants to County a waiver of subrogation which any insurer may acquire against County, its officers, officials, employees, and volunteers, from Concessionaire by virtue of the payment of any loss. Concessionaire agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Workers' Compensation

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Concessionaire, its employees, agents, and sub Concessionaires.

Sub Concessionaires

Concessionaire shall require and verify that all sub Concessionaires maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to: General Services Agency addressed as follows:

Attn: Larry Iaquinto, Parks Superintendent
San Luis Obispo County
General Services Agency

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1087 Santa Rosa Street

San Luis Obispo, CA 93408

9. **Indemnification:** Concessionaire shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, liability, loss, injury, damages, costs, expenses, judgments, attorney and expert witness fees, or other losses that may be asserted by any person or entity, including Concessionaire, and that arise out of or are made in connection with the negligent or wrongful acts or omissions relating to Concessionaire's performance of any obligation or duty provided for or relating (directly or indirectly) to this Contract, whether or not such claim is caused in whole or in part by the active or passive negligence of County, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Contract and the remaining language shall be given full force and effect.

10. **Waiver:** Concessionaire hereby waives any and all claims for damages that may be caused by County in re-entering and taking possession of the Premises, and all claims for damages that may result from the destruction of or injury to the Premises thereby, and all claims for damages to or loss of such property belonging to Concessionaire as may be in or upon the Premises at the time of such re-entering. Concessionaire hereby also waives any and all claims against County for loss or damages to any property of Concessionaire from any cause arising at any time.

11. **Assignment:** This Contract is of a personal nature and Concessionaire shall not assign, sublet, mortgage, pledge or otherwise transfer this Contract, either voluntarily or by operation of law, in whole or in part.

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12. **Rules:** The County reserves the right at any time to make such reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care, and cleanliness of the Premises, and for the preservation of good order therein, and Concessionaire hereby agrees to strictly comply therewith.

13. **Venue and Choice of Laws:** This Contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California and in a court of competent jurisdiction located in San Luis Obispo County.

14. **Repair and Surrender:** Concessionaire hereby accepts the Premises in good condition and agrees to surrender possession of and restore the Premises unto County in the same and as good condition as received upon termination of this Agreement. Concessionaire further agrees to promptly repair any and all damage caused by Concessionaire in the use of the Premises.

15. **Termination of Contract for Convenience of Either Party.** Either party may terminate this Contract at any time by giving to the other party 60 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

16. **Breach:** This Contract is granted by the County upon the condition that in the event the County deems objectionable or improper any conduct on the part of the Concessionaire, its employees or agents, which shall not have been remedied or corrected within a period of ten (10) days after written notice thereof by County to Concessionaire; or if default or breach of this Use Permit be made by Concessionaire in any of the covenants herein contained and Concessionaire shall continue in such default or breach; or should any attachment, garnishment or execution be levied against the Concessionaire or County's property and not be removed within ten (10) days after written notice from

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County; or if Concessionaire shall cease its operations under this Contract for causes other than destruction of the Premises, on giving ten (10) days notice of intention to do so, and upon expiration of said notice, County, or its agents or employees, shall be entitled to the immediate possession of the Premises. The exercise of the remedies provided for in this section shall be cumulative and in no way affect or replace other remedies available to County.

17. **Independent Contractor Status:** Concessionaire enters into this Contract solely and exclusively as an independent contractor and only in that capacity and not as a partner or employee of the County.

18. **Provisions Deemed Covenants and Conditions:** The parties hereto agree that all of the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions were used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

19. **Notices:** All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, postage prepaid and addressed as follows:

To Permittee at: California Hot Dog Co.
 402 Dan Court
 Santa Maria, CA 93454

Contact Person: Bobby and Dianna Duran
 805-260-4029

To County at: County of San Luis Obispo
 General Services Agency
 1087 Santa Rosa Street

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San Luis Obispo, CA 93408

Attention: Parks Superintendent

Contact Person: Larry laquinto,

Parks Superintendent - Parks (805) 781-5209

20. **Severability:** The invalidity of any provision of this Contract shall not affect the validity, enforceability of any other provision of this Contract.

21. **Business Interruption:** Concessionaire shall have no claim to County for damages or lost income if, for any reason, Concessionaire experiences an interruption in business operations however occurring at the Premises.

22. **Power and Authority of Permittee:** If Concessionaire is a corporation or a limited liability company, Concessionaire represents and warrants that the person(s) signing this Contract have full authority and authorization to bind Concessionaire to the terms, covenants, and conditions contained herein.

23. **Entire Agreement and Modifications:** This Contract supersedes all previous Contracts and/or Agreements between the parties and constitutes the entire understanding of the County and Concessionaire. Concessionaire shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Concessionaire specifically acknowledges that in entering into this Contract, Concessionaire relies solely upon the provisions contained in the Contract and no other Agreement whether written or oral prior to entering this Contract. IN WITNESS WHEREOF, County and Concessionaire agree to all of the terms and conditions hereinabove set forth.

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/////////////////NOTHING FURTHER EXCEPT SIGNATURES/////////////////

COUNTY OF SAN LUIS OBISPO

By: _____

Chairperson of the Board of Supervisors

Approved by the Board of Supervisors this

day of _____, 2013.

ATTEST:

Clerk of the Board of Supervisors

PERMITTEE:



By _____

Name and Title

Date: 2-27-13

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APPROVED AS TO FORM AND
LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: Shanna Mattinger
Deputy County Counsel

DATE: 2/26/13

EXHIBIT "A" FOR AVILA PLAZA
Red block indicates Premises Location

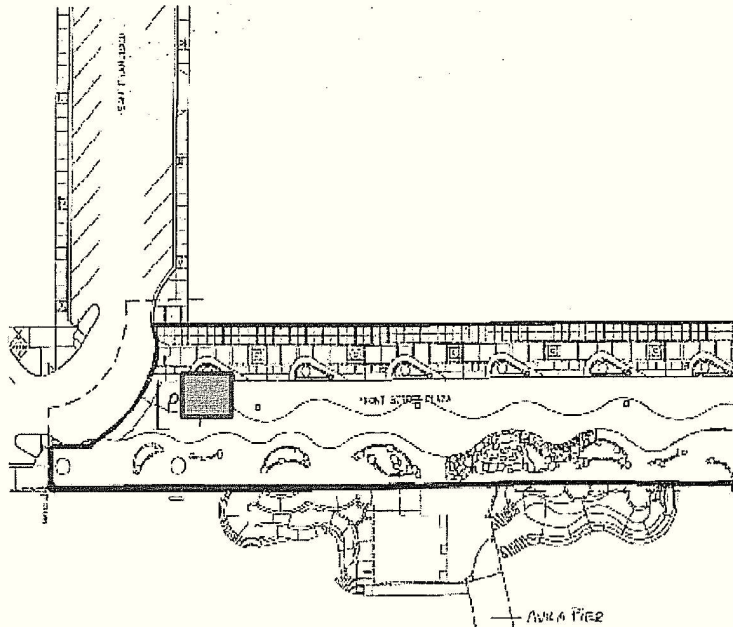


EXHIBIT A

EXHIBIT "B"

The vending cart shall be well stocked and operated at the time and during the days of the week as set forth below. The below hours of operation are mutually agreed upon by Concessionaire and County to best serve the public and represent Concessionaire's minimum service requirements. If Concessionaire desires to adjust the hours or days of operation such that they are below these minimum requirements, Concessionaire shall secure the prior written permission of County. Concessionaire may elect to provide hours of operation above and beyond those defined below upon written notification to, and approval by, the County.

Summer Season

The summer season is defined for the purpose of this Contract as commencing annually on the first day of Memorial Day and ending on the last day of Labor Day weekend. Concessionaire shall operate its business six (6) days per week, including all Saturdays, Sundays and holidays, from noon to 5:00 p.m., weather permitting.

Concessionaire is entitled to two (2) consecutive or non-consecutive "no-show" days, excepting Saturdays, Sundays and holidays during the summer season without being considered in breach of this Contract, provided Concessionaire notifies the County, in writing, two weeks in advance.

Fall Season

The fall season is defined for the purpose of this Contract as commencing annually on the day after Labor Day weekend and ending the following October 31. Concessionaire shall operate its business on all Saturdays, Sundays and holidays, between the hours of noon to 5:00 p.m., weather permitting, during the fall season.

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Winter Season

The winter season is defined for the purpose of this Contract as commencing annually on November 1 and ending the following March 31. There are no minimum days or hours of operation requirements during the winter season.

Spring Season

The spring season is defined for the purpose of this Contract as commencing annually on April 1 and ending at the close of business on the Friday immediately prior to Memorial Day weekend. Concessionaire shall operate its business on all Saturdays, Sundays and holidays, between the hours of noon to 5:00 p.m., weather permitting.

EXHIBIT "C"

This exhibit is a listing of products to be sold, with pricing.

Hot Dogs \$2.50

Jumbo Dogs \$4.00

Hebrew All Beef Dog \$4.00

Cajun Sausage \$4.00

Polish Sausage \$4.00

Nachos \$3.00

Chips \$1.00

Candy Licorice 12 for \$1.00

Cotton Candy \$1.75 small

\$3.50 large

Water \$1.50

Soda \$1.50

Hawaiian Shaved Ice \$2.00 small

\$3.50 medium

\$5.00 large